IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 175 of 1982

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHIRAJLAL HARJIVAN DESAI

Versus

RATILAL R. NIMBARK

Appearance:

MR DD VYAS, for MR DL KOTHARI for Petitioners

MR BD KARIA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 13/06/2000

ORAL JUDGEMENT

1. This is a revision application by the original plaintiffs-landlords under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, challenging the concurrent judgement and decree, rejecting their suit for eviction of the respondent defendant-tenant, and confirmation of the same in Appeal.

2. The landlords had filed a suit for eviction

against the defendant-tenant on the ground of reasonable and bonafide requirement of the landlord within the meaning of section 13(1)(g) of the Bombay Rent Act, on the ground that they require the suit premises rented out to the defendant-tenant (which is adjacent to the property owned and occupied by the landlords) for the purpose of expansion of their existing business of Chemists and Druggists, by adding a pharmacy section to the said existing business.

3. The trial court, after appreciating the evidence on record, dismissed the suit of the landlords, by holding that the requirements of the landlords was neither reasonable nor bonafide and even otherwise the tenant would suffer greater hardship within the meaning of section 13(2) of the said Act, if a decree were passed than the hardship which would be suffered by the landlords if the decree were refused. The landlords thereupon preferred an appeal, which was also dismissed. Hence the present revision.

3. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

4. Learned counsel for the petitioners-landlords vehemently contended that the two courts below have gone astray in their interpretation of the legal concept of reasonable and bonafide requirement within the meaning of section 13(1)(g) of the said Act. It is not necessary here to cite the various decisions on what constitutes "reasonable and bonafide requirement" within the meaning of section 13(1)(g). By now it is well settled that such a requirement of landlord cannot be "a mere wish or

desire", as against which it also need not be "a dire necessity or emergent need".

5. In this context learned counsel for the petitioners sought to rely upon a decision of the Supreme Court in the case of Raghunath G. Panhale (dead) by Lrs. Vs. M/s Chaganlal Sundarji & Co., reported in 2000(1) GLH 208. This decision lays down that the reasonable and bonafide requirement of the landlord in the context of section 13(1)(g) means that the requirement of the landlord is not fanciful or unreasonable, and is not a mere desire. It must, however, be established that it is between mere desire on one hand and a dire necessity on the other. Thus, the requirement must be honest and not tainted with any oblique motive.

6. Learned counsel for the petitioners, with reference to the facts of his case, also sought to rely upon a decision of the Supreme Court in the case of Ragavendra Kumar Vs. Firm Prem Machinery & Co., reported in 2000(1) SCC 679, which decision lays down that the landlord is the best judge of his own requirement and has complete freedom in the matter, and if the landlord establishes by evidence that although he owned several other shops and houses, but that they were not vacant and not as suitable as the suit premises were for the proposed business, this choice of the landlord must be accepted.

6.1 There can be no dispute on the principles referred to and relied upon by the learned counsel for the landlords. However, on the facts of the case, both the courts below have found that for the purpose of starting a pharmacy section, the relevant rules framed under the Drugs and Cosmetics Act, prescribes the minimum requirement in terms of area at 64 square feet. While it is true that the landlords are already doing business as Druggists and Chemists in their own premises admeasuring 132 square feet, they cannot be compelled to sacrifice 64 square feet for the purpose of starting a new business by curtailing their existing business. However, what is most pertinent and relevant is that the landlords can certainly spare 64 square feet from the other premises owned by them, which is only two shops away from the leased premises. It is also material and relevant to observe that although the landlords claim to be running a business in surgical instruments in those premises, they have nowhere asserted nor established by appropriate evidence that these premises are unsuitable for starting a pharmacy. Both the courts below have criticised the total absence of evidence led by the landlords as to the

nature and extent of this so-called surgical business carried out in the other premises (only two shops down the line). It is, therefore, not possible to accept the contention of learned counsel for the petitioners that they cannot be asked to sacrifice some area from their business of surgical instruments in order to accommodate the pharmacy section. This submission is based on an assumption that the area of 64 square feet for starting the pharmacy section would have to be sacrificed from the business of surgical instruments. As already observed hereinabove, there is absolutely no evidence whatsoever on record as regards the nature, the extent, the volume of business of surgical instruments, and the area in which such business is done.

7. Thus, on a total appraisal of the evidence on record it would appear that the concurrent findings of fact recorded by the two courts below to the effect that the landlord has failed to establish reasonable and bonafide requirement within the meaning of section 13(1)(g) of the Act is a finding which requires to be confirmed.

8. Even assuming for the sake of argument that the landlords have established their reasonable and bonafide requirement, that is not an end of the matter. Even if the landlords have succeeded in establishing their reasonable and bonafide requirement, section 13(2) of the said Act would intervene. In other words, it would then be required to be established that the landlords would suffer greater hardship if a decree for eviction is refused, than the hardship to be suffered by the tenant if a decree were passed.

8.1 In this context both the courts below have lost sight of the vital fact that the landlords had alternative premises of their own ownership available only two shops down the line, and that the landlords have made absolutely no attempt to show that the said premises were, for any reason whatsoever, unsuitable for starting a pharmacy business. Thus, when we find that alternative premises belonging to the landlords themselves were available for starting a pharmacy section, this becomes an extremely relevant factor so far as the relative hardship between the parties is concerned. It would confer no advantage on the landlord, as is submitted by learned counsel for the landlords, that the tenant has made no serious effort to locate alternative premises in the suit, in case a decree of eviction is passed. There is evidence on record to indicate that although other premises were available in the city, there is absolutely

no evidence on record that such premises were available on the terms comparable to the tenanted premises.

8.2 Thus, to summarise, even if it is assumed that the landlords have succeeded in establishing reasonable and bonafide requirement within the meaning of section 13(1)(g), they have failed to establish greater hardship to themselves within the meaning of section 13(2) of the said Act. For this reason alone the judgements and decrees of the two courts below require to be confirmed.

9. The last point which requires to be considered is whether the suit was maintainable or tenable at law as filed. The two courts have come to the conclusion that the suit is neither maintainable nor tenable, since although it is filed by all the co-owners, the plaint has been signed by only one of them viz. the plaintiff no.1. This finding is obviously contrary to the law and requires to be corrected. By now it is well established that a suit can be filed by only one co-owner, as decided by this court in the case of Amrutlal Saremal Vs. Smt. Deviben, reported in 23(1) GLR 208. On the facts of the case merely because the plaint is signed by only one of the co-plaintiffs does not mean that the suit is not filed by all the co-plaintiffs. Even if it be assumed that the suit is filed only by that co-owner who has signed the plaint, the suit would, by virtue of the aforesaid decision, be maintainable at the instance of one co-owner. To this extent, therefore, the finding recorded by the courts below are required to be quashed and set aside, by holding that the suit was maintainable.

10. In the premises aforesaid, I find that there is no cause for interfering with the judgements and decrees of the two courts below by way of the present revision (except for the limited finding as to the maintainability of this suit). This revision is, therefore, dismissed. Rule is discharged with no order as to costs.

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